

House Study Bill 104 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON BALTIMORE)

A BILL FOR

1 An Act concerning prescription drug or controlled substance
2 medication defenses in operating-while-intoxicated cases.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 321J.2, subsection 11, Code 2013, is
2 amended to read as follows:

3 11. ~~a. This section does not apply to a person operating~~
4 ~~a motor vehicle while under the influence of a drug if the~~
5 ~~substance~~ When charged with a violation of subsection 1,
6 paragraph "a", a person who has consented to testing in
7 accordance with section 321J.6 may assert, as an affirmative
8 defense, that the drug involved was prescribed for the person
9 and was taken under the prescription and in accordance with
10 the directions of a medical practitioner as defined in chapter
11 155A or if the substance drug was dispensed by a pharmacist
12 without a prescription pursuant to the rules of the board of
13 pharmacy, if there is no evidence of the consumption of alcohol
14 and there is evidence the medical practitioner or pharmacist
15 ~~had not directed affirmatively permitted the person to refrain~~
16 ~~from operating~~ operate a motor vehicle.

17 b. When charged with a violation of subsection 1, paragraph
18 "c", a person may assert, as an affirmative defense, that
19 the controlled substance present in the person's blood or
20 urine was prescribed or dispensed for the person and was taken
21 in accordance with the directions of a practitioner and the
22 labeling directions of the pharmacy, as that person and place
23 of business are defined in section 155A.3.

24 c. (1) A person asserting an affirmative defense pursuant
25 to this subsection shall provide notice to the state not
26 later than forty days after arraignment. At the time notice
27 is provided, the person shall provide a list of witnesses
28 and shall allow the state to inspect and copy any records or
29 statements upon which the witnesses will rely in testifying.

30 (2) Failure to comply with the requirements of this lettered
31 paragraph "c" bars introduction of any evidence of impairment
32 caused by a prescription drug or any evidence of the presence
33 of a controlled substance in a prescribed drug, except the
34 testimony of the person, without leave of the court for good
35 cause shown.

1 d. A person asserting an affirmative defense directly
2 relating to the person's prescription or prescriptions waives
3 all of the following:

4 (1) The confidentiality privilege pursuant to section
5 622.10.

6 (2) Any privilege or nondisclosure requirement under state
7 or federal privacy laws.

8 EXPLANATION

9 This bill relates to prescription drug or controlled
10 substance medication defenses in operating-while-intoxicated
11 cases.

12 Under current law, a person's use of a valid drug
13 prescription taken in accordance with the directions of
14 a medical practitioner or pharmacist is a defense to an
15 operating-while-intoxicated (OWI) charge if there is no
16 evidence of alcohol consumption and the medical practitioner or
17 pharmacist did not direct the person to refrain from operating
18 a motor vehicle. The bill amends this law to provide that
19 a person who is charged with an OWI violation while under
20 the influence of an alcoholic beverage or other drug or a
21 combination of both who has consented to testing in accordance
22 with Code section 321J.6 may assert, as an affirmative defense,
23 that the drug involved was prescribed or dispensed for the
24 person and was taken in accordance with the directions of a
25 practitioner and the labeling directions of the pharmacy, if
26 there is no evidence of the consumption of alcohol and there is
27 evidence the prescriber affirmatively permitted the person to
28 operate a motor vehicle.

29 Current law also provides that a person charged with an
30 OWI offense based upon the presence of a controlled substance
31 in the person's blood or urine may assert, as an affirmative
32 defense, that the controlled substance was prescribed or
33 dispensed for the person and was taken in accordance with the
34 directions of a practitioner and the labeling directions of the
35 pharmacy.

1 The bill provides that a person asserting an affirmative
2 prescription drug defense is required to provide notice to
3 the state not later than 40 days after arraignment. At the
4 time notice is provided, the person is required to provide a
5 list of witnesses and shall allow the state to inspect and
6 copy any records or statements upon which the witnesses will
7 rely in testifying. Failure to comply with these requirements
8 bars introduction of any evidence of impairment caused by
9 a prescription drug or any evidence of the presence of a
10 controlled substance in a prescribed drug, except the testimony
11 of the person, without leave of the court for good cause shown.

12 The bill provides that a person asserting an affirmative
13 defense directly relating to the person's prescription or
14 prescriptions waives the confidentiality privilege pursuant to
15 Code section 622.10 (confidential professional communications)
16 and any privilege or nondisclosure requirement under state or
17 federal privacy laws.